IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.128 OF 2005.

WITH

CIVIL APPLICATION NO.226 OF 2005

Shri Balkrishna Dnyanoba Bankar : Appellant.

versus

Shri Kisan Sawalram Padwal

& ors. : Respondents.

Mr.Bipin Jagoje for the appellant.

Mr.Saumen S. Vidyarthi for Respondent No.5.

CORAM : D.G.DESHPANDE,J.

DATED : 14th October 2005.

ORAL ORDER

1. The matter was heard by me earlier. Time was given to the parties for settlement. Counsel for the appellant states that settlement is not possible. Advocate Mr.Vidyarthi for New India Assurance Co. is present. Nobody is present for other respondents.

2. The appellant is the owner of the vehicle. The Extra Joint District Judge, Pune has saddled this owner with compensation of Rs.2,58,400/- with interest at the rate of 9% p.a. The manner in which the accident occurred is very peculiar and that in itself supports the contention of the appellant/owner that in any case he cannot be held liable to this accident.

3. The appellant owned a truck bearing MHF-7872. Deceased was the son of claimant - Respondent Nos.1 and 2. The deceased was in employment of the appellant as driver. He was driving the said truck on 17.5.1992. As per the case of the claimants, the truck hit a stone on the road in in the darkness of night as result of which joint rod was dislocated from the thread and socket of spring-pata near back side left wheel of the truck and front gundipata was dislocated and the truck tilted towards the right side and fell flat on the right side. The driver i.e. the deceased sustained fracture to his 5th to 9th ribs on the right side and also received injuries on the back. He was removed to the hospital but he succumbed to the injuries and died. The crucial question before the tribunal

was, whether in the circumstances any liability can be fixed upon the owner of the vehicle and even though the tribunal has come to the conclusion in favour of the claimants, that finding is perverse and is required to be set aside. The counsel for the appellant has relied upon a judgment of the Karnataka High Court reported in **1991 ACJ 699 (Y.R.Shanbhag v. Mohammed Gouse and others)** wherein it is held that if the driver sustained injury due to his own driving, then owner cannot be held liable.

4. Apart from the aforesaid case, the owner has no role played in this accident. He has handed over the truck to the deceased driver. It was for the driver to drive the truck carefully particularly when it was a night time. Nothing is brought on record to show that the accident occurred on account of any mechanical failure. But the case that is proved is that the truck hit a stone on the road. This is, therefore, a case of total and complete negligence of the driver and when the driver himself is in fault and total negligent, the tribunal committed an error in fixing the liability upon the owner.

5. Therefore, in these circumstance, this appeal has to be allowed. I must record here the generous gesture shown by the appellant to offer Rs.1,50,000/- to the driver on humanitarian ground. I am just recording this offer. If at all at any time the claimants want to claim this amount, they can claim, but not as a matter of right from the appellant.

6. The Civil Application is for staying the operation of the judgement and order of the tribunal. In view of the aforesaid reasons, the civil application does not survive. It is disposed of. Hence the following order :-

:ORDER:

The appeal is allowed. Impugned judgment of the tribunal is set aside and quashed. The claim application of the claimants is dismissed.

Civil Application No.226 of 2005 is disposed of.

No order as to costs.

[D.G.DESHPANDE]